IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1405 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARILAL J KANSARA

Versus

KANTILAL P BUDHBHATTI

Appearance:

MR PV HATHI for Petitioners

MR YS MANKAD for Respondent

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/09/2000

ORAL JUDGEMENT

This Civil Revision Application under Sec.29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (`the Act' for short) is directed against the judgment and decree dated 9th September, 1986

passed by the District Judge, Bhuj in Regular Civil Appeal No.18 of 1982 reversing the judgment and decree dated 31-12-1981 passed by the Civil Judge (J.D.), Bhuj in Civil Suit No.29 of 1978 by which the suit filed by the respondent was dismissed.

2. The brief facts giving rise to this revision application are as under:-

2.1 The present respondent-original plaintiff filed a Regular Civil Suit No.29 of 1978 in the Court of learned Civil Judge (J.D.) at Bhuj against the present petitioners-original defendants. It was stated in the said suit that the defendant No.1 was the tenant in arrears and the plaintiff rented the premises for his personal use and occupation. The defendant No.1 sub let the suit premises to his father, the defendant No.2, which was let out to defendant No.1 for using it as a shop. As the said premise was not used as a shop but as a godown, he committed breach of the terms and conditions of tenancy and, therefore, plaintiff prayed for possession of suit premises along with arrears of rent and mense profit by way of the aforesaid civil suit.

2.2 Suit was contested by the present petitioners-original defendants denying all the allegations and also disputing and challenging the validity of the notice and further disputed regarding the standard rent. At the end of the trial, the trial Court partly dismissed the suit for eviction of tenant and recovery of possession. However, it was partly decreed with regard to arrears of rent.

2.4 Against that, the respondent landlord preferred Regular Civil Appeal No.18 of 1982. Only two points were urged before the Appellate Court. One was that the defendant No.1 sub let the suit premises to defendant No.2 who is the father of the defendant No.1 and the other was that by using the suit premises as godown instead of shop, the defendant No.1 committed breach of the terms of tenancy. As far as the first point i.e. sub letting, is concerned, the Appellate Court held it against the respondent-appellant against which the respondent did not file any revision or cross objection. Hence, the findings on the point of sub letting need not be disturbed. As far as the second point i.e. using the suit premises as godown instead of shop is concerned, by the judgment of the Appellate Court, the judgment and decree passed by the learned Civil Judge (J.D.), Bhuj in Civil Suit No.29 of 1978 was reversed only on the ground that the petitioner No.1 was using the suit premises as

godown in breach of the terms and conditions of tenancy.

3. A short point arises for consideration before this Court is whether the judgment and decree passed by the Appellate Court for eviction of the revisionist on the ground of change of use can be sustained.

4. I have heard learned counsel for the petitioners, Mr.P.V.Hathi and learned counsel for the respondent, Mr.Y.S.Mankad. I have also gone through the reasoned judgment and decree passed by the Courts below as well as the oral and documentary evidence which have been shown to me by the learned counsel for the respective parties more particularly rent note Ex.38 dated 17-1-1966.

5. It is established from the record and proceedings and from the evidence that the suit property at one stage belonged to Patel Mulji Govind who had rented the same to the present petitioner No.1 under a rent note Ex.38. Subsequently, he had sold the suit property to the father of the plaintiff by a sale deed dated 6-3-1972 which has been sold to plaintiff by a sale deed dated 3-11-1972. Thus, the petitioner No.1 is the tenant of plaintiff's predecessor.

6. The question before this Court is of the interpretation of the terms of the rent note Ex.38. It has been stated by the petitioner No.1 tenant that he himself will do the business in the suit premises and will not use the same for any other purpose. Plaintiff has come out with the specific case that the defendant No.1 had committed breach of the terms of tenancy by not using the suit premise for the purpose for which it was let out. According to the respondent, petitioner No.1 is using the same as a godown. Whereas the defendant No.1 has come out with the case that he has not committed any breach of the terms of the tenancy and he is using the same as per the terms of the tenancy. It appears that the Appellate Court has reversed the findings of the trial Court on the basis of appreciation of oral as well as documentary evidence and more particularly on the basis of oral evidence of plaintiff's witnesses namely, Narandas Harilal (Ex.74) and Girdharilal Dharshi (Ex.75). If one looks at the oral evidence of these two witnesses, it would reveal that petitioner No.1 has not committed breach of the terms of condition of tenancy by using the said premises as a godown. Court below, i.e. the trial Court, has rightly not believed the above witnesses on that point. Once the trial Court comes to the conclusion after appreciating the oral evidence, Appellate Court should not re-appreciate the same even if another view on

the same set of facts may just be possible in view of the observations of the Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai 1998(2) GLH 736. I may state that not holding a licence of shop and establishment since 1966 and not keeping open the shop after sunset are not the points to be considered for reversing the findings of the trial Court by the Appellate Court.

7. When specific evidence has come out on record that the petitioner Nos.1 and 2 are son and father respectively who are staying together under one roof in a joint family and when it has been established and believed by the trial Court that the defendant No.2 was doing the work of utensils repairing in the shop in question, the findings given by the Appellate Court that petitioner No.1 is not using premises as a shop but as a godown is without any basis. I am of the opinion that plaintiff has failed to establish the above point and hence, it cannot be said that any breach of terms of rent note has been committed by the petitioner No.1. When the question of interpretation of a particular expression used in the document comes before the Court, then it has to be widely interpreted. That by itself does not mean that the contents of the document has to be appreciated for interpreting the same in its correct perspective. In my view, the Appellate Court has committed grave error by appreciating the evidence given by the trial Court which is not permitted as per the settled principles of law and, therefore, the judgment and decree passed by the Appellate Court are required to be set aside and judgment and decree passed by the trial Court are required to be restored.

8. In view of the foregoing discussion, this Civil Revision Application is allowed. The judgment and decree dated 9-9-1986 passed by the learned District Judge, Bhuj in Regular Civil Appeal No.18 of 1982 are hereby set aside. Consequently, the judgment and decree dated 31-12-1981 passed by the learned Civil Judge (J.D.), Bhuj in Regular Civil Suit No.29 of 1978 are hereby restored. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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